BORA LASKIN LAW LIBRARY
31761 10631703 5

MUNICIPAL AND PLANNING LAW

Stanley M. Makuch

Volume 1

1981-82

LAW LIBRARY
SEP 16 1981
FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

MUNICIPAL AND PLANNING LAW

Stanley M. Makuch

Volume 1

1981-82

Faculty of Law

University of Toronto

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/municipalplannin01maku_6

MUNICIPAL AND PLANNING LAW

Table of Contents

CHAPTER I

Introduction 1

Jarvis, Acting for a Developer 2

Robarts, Report of the Royal Commission on Metropolitan Toronto 6

Dupre, Intergovernmental Finance in Ontario: A Provincial-Local Perspective 11

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 16

Notes and Questions 21

CHAPTER II

THE ORGANIZATION OF MUNICIPALITIES

Introduction 22

A. Approaches to Municipal Organization 23

Plunkett, Urban Canada and Its Government 23

Note 29

1. Municipal Council 30

Royal Commission on Metropolitan Toronto UPDATE 30

Note 30

2. The Executive 31

(i) The Mayor 31

Jaffary & Makuch, Local Decision-Making and Administration 31

(ii) Reforming the Executive 32

Jaffary and Makuch, Local Decision-Making and Administration 32

3.	The Board of Control - Executive Committee	34
	Plunkett, Urban Canada and Its Government	34
	Note	36
	Rowat, The Canadian Municipal System	36
	Jaffary & Makuch, Local Decision-Making and Administration	38
4.	The Manager Plan	
	Notes and Questions	40
	Rowat, The Canadian Municipal System	41
5.	Council-City Commissioner System	45
	Plunkett, Urban Canada and Its Government	45
6.	Standing Committees	46
	Jaffary and Makuch, Local Decision-Making	46
7.	Approaches to Reform	47
	(i) The Basic Assumption - Policy v. Administration	47
	Jaffary and Makuch, Local Decision-Making and Administration	47
	Hickey, Decision-Making Processes in Ontario's Local Governments	51
	(ii) The Winnipeg Experience	57
	Proposal for Urban Reorganization in the Greater Winnipeg Area	57
	Note	60
	Cook & Feldman, Approaches to Local Government Reform in Canada: The Case of Winnipeg	61
	Jacobs, The Death and Life of Great American Cities	62
	(iii) A New Suggestion for Toronto	64
	City of Toronto Neighbourhood Services Work Group, Report	64

B. The Reorganization of Municipalities 68

1. The Need for Reform 68

Advisory Committee on Intergovernmental Relations, In Search of Balance: Canada's Intergovernmental Experience 68

Advisory Committee on Intergovernmental Relations, Alternative Approaches to Governmental Reorganization in Metropolitan Areas 70

2. Distribution of Responsibilities 75

a) The Metropolitan Toronto Example 75

Note 75

b) Regional Government 76

The Ontario Committee on Taxation, Report: Volume II - The Local Revenue System 76

Note 84

3. The Problems With Reorganization 84

(i) Boundaries 84

Note 84

Robarts, Report of the Royal Commission on Metropolitan Toronto 85

(ii) Special Purpose Bodies 86

Note 86

Bureau of Municipal Research, "The 101 Governments of Metro Toronto" 86

Note 95

Re McAuliffe and Metro Toronto Bd. of Commissioners of Police 95

Note 102

Jaffary and Makuch, Local Decision-Making and Administration 102

(iii) Representation 103

Jaffary and Makuch, Local Decision-Making and Administration 103

(iv) Intra Regional Conflict 109

Simpson, City Loses Important Votes At First Meeting of Metro Council 109

Globe & Mail, City Decides on Legal Fight over Spadina 109

Globe & Mail, York Joins City in Opposing Spadina Paving 110

Weinstein, "The Effect of the Federal Reapportionment Decisions on Municipal Government" 111

(v) An Alternative: The Winnipeg Experience 112

Proposals for Urban Reorganization in the Greater Winnipeg Area 112

Globe & Mail, Assessing the Plan to Reform Winnipeg's Government 116

CHAPTER III

LOCAL GOVERNMENT FINANCING

Introduction 123

A. Introduction 124

1. Municipal Finance Generally 124

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 124

Local Government Finance in Ontario (Ministries of Treasury and Economics & Intergovernmental affairs) 128

2. The Property Tax 136

The Ontario Committee on Taxation, Report: Volume II - The Local Revenue System 136

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 138

B. Restraints on Municipal Finance 140

1. The Political Process 140

Plunkett, The Financial Structure and The Decision-Making Process of Canadian Municipal Government 140

Statement by Paul V. Godfrey, President Canadian Federation of Mayors and Municipalities 144

Note 147

2. Legal Restraints 148

Note 148

Re Corporation of the Township of Nepean 148

Jaffary and Makuch, Local Decision-Making and Administration 154

City of Toronto v. Municipality of Metropolitan Toronto 160

Re Township of Westminster and City of London 163

Re Victoria Harbour Sewage Service 166

Lewis v. Town of Prescott 171

Note 172

C. Property Tax Assessment 173

1. Who is Liable for Property Taxation 173

Note 173

2. What is Assessable Property 173

Note 173

Northern Broadcasting Co. Ltd. v. Improvement District of Mountjoy 174

Note 177

3. Exemptions From Taxation 178

Note 178

(i) Crown Land 178

Re Delta Parking Systems Ltd. and Township of Toronto 178

(ii)	Indian Lands	181
	Note	181
(iii)	Places of Worship and Cemetaries	181
	Note	181
	Re Presbyterian Church Building Corp. and Assessment Comm. for Algoma	181
	Re Singh and City of Sudbury	185
	Note	190
(iv)	Public Education Institutions, Philanthropic or Religious Seminaries and Educational Seminaries	191
	Note	191
	Re McMaster University and City of Hamilton et al.	191
	Note	195
	Donald Piazezza Beauty Salon et al. v. Corporation of the Borough of North York	195
	Note	198
(v)	Public Hospitals, Highways, Municipal Property, Boy Scouts and Girl Guides and Industrial Farms	199
	Note	199
(vi)	Municipal Properties	200
	Note	200
	Toronto Transit Commission v. City of Toronto	200
	Note	202
(vii)	Charitable Institutions	203
	Note	203
	Re Ina Grafton Homes and Township of East York	203
	Assessment Commissioner of the Village of Stouffville v. Mennonite Home Association of York County	206
(viii)	Children's Aid Societies, Scientific or Literary Institutions and Battle Sites	211
	Note	211

(ix) Machinery and Equipment Used for Manufacturing or Farming Purposes 211

Note 211

The City of London v. John Labatt Ltd. 211

Note 214

(x) The Interpretation of "Property Of" 214

Note 214

Re Royal Ontario Museum and Assessment Commissioner for Region No. 10 et al. 214

Re Markham York Hospital et al and Town of Markham 219

(xi) Exceptions to Certain Exemptions 220

Note 220

(xii) Municipal Exemptions 221

Note 221

(xiii) Bonuses 221

Note 221

Re Whitton and City of Ottawa 221

Note 222

4. Valuation of Property 223

(i) Market Value 223

Note 223

Ward, Market Value Re-Assessment 223

Montreal v. Sun Life Assurance Co. of Canada 230

Assessment Commissioner of the York Assessment Office v. Office Speciality Ltd. 242

(ii) Equity 246

Note 246

Joint Committee on Property Tax Reform Interim Report: The Present Property Tax System 246

Re Empire Realty Co. Ltd. and Assessment Commissioner for Metro Toronto 248

Note 258

Foxhead Inn Ltd. v. Regional Assessment Commission 258

Re York Condominium No. 26 551 The West Mall and Assessment Commissioner for the Borough of Etobicoke 259

Devald et al. v. Regional Assessment Commissioner, Region No. 16 et al. 263

Downtown Oshawa Property Owners' Association, Hovell Holdings Limited and Drew Estate v. Regional Assessment Commissioner, Region Number 13, The Corporation of the City of Ottawa 266

Note 269

Regional Assessment Commissioners Region No. 2 et al. v. Ontario Steel Products Co. Ltd. 269

Note 272

(iii) Special Provision for Farm Land 272

Note 272

(iv) Special Provisions for Reforested Lands, Wood Lands and Orchards 273

Note 273

(v) Special Provisions for Golf Courses 273

Note 273

(vi) Other Special Provisions 273

Note 273

5. Business Assessment 274

Note 274

(i) Liability for Business Assessment - Carrying on a Business 274

Note 274

Re Windsor-Essex County Real Estate Board and City of Windsor et al. 274

Note 276

Re Delta Parking Systems Ltd. and Township of Toronto 276

Re Saga Canadian Management Services Ltd. and City of Ottawa et al. 279

Note 288

Re United Trust Co. et al. and City of Toronto et al. 289

Re Plumbing Mart 292

(ii) Rate of Business Assessment 295

6. Appeals 296

Note 296

Downtown Churchworkers Association of the Anglican Church of Canada and Dioceses of Toronto v. Regional Assessment Commissioner, Region No. 7 et al. 297

D. Local Improvements and Special Assessment 304

Note 304

E. Conclusion 305

Financing Development of Local Government in Ontario 305

Notes and Questions 306

Report of the Royal Commission on Metropolitan Toronto 307

CHAPTER IV

JUDICIAL REVIEW OF MUNICIPAL ACTIONS

Introduction 326

A. Constitutionality 327

McKay v. The Queen 327

R. v. Beattie 327

R. v. Top Banana Ltd. 328

Note 328

B. Delegation 330

(i) To Employees 330

Russell v. The Corporation of Toronto 330

R. v. Sandler 331

R. v. Campbell 334

(ii) To Council Committees 335

Simon v. Gastonguay et al. 335

(iii) To the Community

R. v. Sepanary 338

Re Davies and Village of Forest Hill 339

C. Express Authority 343

Morrison v. Kingston 343

Re Christie Taxi Ltd. and Doran 345

Note 347

Ottawa Electric Light Co. v. Corporation of Ottawa 347

Re Weir et al. and The Queen 248

Notes and Questions 351

Re Pride Cleaners and Dyers 352

Re Regional Municipality of Ottawa-Carleton and Voyageur Colonial Ltd. et al. 355

Questions 358

The Royal Commission on Metropolitan Toronto Recommendations 360

D. Discrimination 362

Re Bunce and Town of Cobourg 362

R. v. Donald B. Allen Ltd. 364

City of Ottawa v. Royal Trust Co. 366

City of Verdun v. Sun Oil Co. Ltd. 370

Atkinson v. Municipality of Metropolitan Toronto 374

E. Vagueness 376

City of Montreal v. Morgan 376

F. The Impact of Provincial Policy 379

Re Regional Municipality of Ottawa-Carleton and Township of Marlborough 379

R. v. Morin 382

G. Unreasonableness 385

Kruse v. Johnson 385

H. Geographic Limitations 386

Note 386

R. v. Roy 387

Note 392

I. Bad Faith 393

Re Howard and City of Toronto 393

Kuchma v. Rural Municipality of Tache 396

J. Technical Requirements 398

Re Whitton and City of Ottawa 398

‹

CHAPTER I

INTRODUCTION

The purpose of this course is to provide the student with a basic understanding of the workings of local government, the constraints within which municipalities operate, and in particular the planning powers of municipalities. Lawyers engaged in the practice of municipal law are often called upon to fill a number of roles: acting as counsel to municipal governments and preparing municipal legislation; handling suits for or against the municipal corporation; advising the municipality on finance and bond issues; assisting either the municipality or private citizen with planning or other policy matters; advising on municipal reorganization and intergovernmental relations. In any of these capacities it is important for the lawyer to have an understanding of the institutional, the financial and the legal framework within which municipalities function. An understanding of the municipal planning function is also crucial as it is one of the most important aspects of municipal authority.

The materials in this casebook survey a number of these important areas: municipal organization; problems in local government finance; judicial review of municipal powers; the role of the municipality in planning, the provincial role in planning and in particular the role of the Ontario Municipal Board as an administrative review agency. Official plans, zoning by-laws, and development agreements are important aspects of this examination. It is hoped that this course will provide both a broad perspective from which to view municipal government and planning and a narrower perspective from which specific legal problems particularly with respect to planning may be analyzed.

The theme of this course is that the purpose of local government is to ensure local political control over the delivery of local services and local planning decisions. The adequacy of present local government structures, and authority and the appropriateness of judicial and administrative review of local government action should be kept in mind.

CHAPTER II

THE ORGANIZATION OF MUNICIPALITIES

Introduction

The purpose of Part A of this chapter is to examine the way in which municipalities may be organized. It deals with a number of alternative methods used to provide for a legislative and executive body at the local level of government. Most people are very familiar with the structure of federal and provincial governments which have a high degree of uniformity. Local governments, councils and executive bodies, differ from municipality to municipality, as does the relationship of these bodies with the administrative services within the municipality.

The organization of municipalities is important because it may impose certain legal restraints on decision-making at the local level. For example, council may not be able to act without executive approval. It is also important for a lawyer to understand the structure of a municipality for he often acts as an advocate for his client's interests and must therefore appreciate how to guide those interests through the labyrinth of municipal decision-making bodies be they legislative, executive or administrative. Part A of this chapter attempts to provide that understanding.

Part B of this chapter introduces a new dimension to the labyrinth by adding to the above concerns regarding municipal structure additional concerns respecting the suitability of existing municipal boundaries and functions. This section deals with metropolitan and regional governments. These governments were designed in part to deal with the problem of urbanization growing beyond municipal boundaries and the problem of municipalities being unable to adequately deal with urbanization because of numerous special bodies which have jurisdiction within the municipalities. The reorganization of municipal government therefore assumes a basic legislative, executive and administrative structure in municipalities but adds on to that a new level of local government with a similar structure. Issues then arise as to divisions of jurisdiction between the levels, representation at the various levels, and the appropriateness of adding a new level of local government.

CHAPTER III

LOCAL GOVERNMENT FINANCING

Introduction

The purpose of this chapter is two-fold. It is firstly to present the limitations that exist on the ability of municipalities to raise revenues and to make expenditures. Those limitations are both political and legal. Both are important to the lawyer. The political limitations can greatly influence policy and in particular planning decisions which the lawyer may be trying to affect on behalf of a client. The legal limitations are important both in providing appeals from those decisions and in influencing municipal decisions. The role of the Ontario Municipal Board in this process is introduced.

The second purpose is to introduce assessment and some important forms of municipal taxation. Assessment is important in that it affects every owner of real property.

In reading these materials consideration should be given to whether all the restrictions presently existing on municipal authority in financing are desirable or necessary. As well, thought should be given to changing the methods of raising municipal revenues. Of concern here is the equity of the present system in terms of the bearers of the burden of taxation and the impact the present system has on the decision-making process within municipalities.

CHAPTER IV

JUDICIAL REVIEW OF MUNICIPAL ACTION

Introduction

The purpose of this chapter is to indicate the more traditional legal constraints on municipalities. These are varied and important - perhaps the most important being that a municipality can do "only what it is expressly empowered to do". These materials do not introduce any new legal concepts, indeed they indicate that local governments are in law like any other administrative tribunal.

A most important consideration to keep in mind in reading this section of the materials is to consider the effect of these limitations on the abilities of municipalities to function as "local governments" which can determine local priorities and policies. It is clear that municipalities are not sovereign and are closely directed by the province. It has been argued that traditional methods of statutory drafting and interpretation help create this situation and help place municipalities in the role of administrators of provincial policy. If this is so are there methods to alter this relationship to encourage the courts to take a different approach in interpreting municipal powers? The rule against delegation is also an important consideration. It helps to preserve "the rule of law". Consideration should be given, however, to the effect the rule against delegation has on the ability of municipal councils to formulate and develop policy as do the provincial and federal legislatures. In order to examine these issues, Chapter I, The Power to Delegate, and Chapter V, Services (The Provincial Municipal Relationship and Local Autonomy) found in Local Decision-Making and Administration (Jaffary and Makuch) should be read carefully with these materials.